

Union Calendar No. 219

103D CONGRESS  
1ST SESSION

H. R. 3515

[Report No. 103-394]

A BILL

To amend the Egg Research and Consumer Information Act, the Watermelon Research and Promotion Act, and the Lime Research, Promotion, and Consumer Information Act of 1990 to revise the operation of these Acts and to authorize the establishment of a fresh cut flowers and fresh cut greens promotion and consumer information program for the benefit of the floricultural industry, and for other purposes.

NOVEMBER 20, 1993

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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**IN THE HOUSE OF REPRESENTATIVES**

NOVEMBER 16, 1993

Mr. DE LA GARZA (for himself, Mr. STENHOLM, Mr. ROBERTS, Mr. LEWIS of Florida, Mr. BOEHNER, Mr. HOLDEN, and Mr. ENGLISH of Oklahoma) introduced the following bill; which was referred to the Committee on Agriculture

NOVEMBER 20, 1993

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on November 16, 1993]

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**A BILL**

To amend the Egg Research and Consumer Information Act, the Watermelon Research and Promotion Act, and the Lime Research, Promotion, and Consumer Information Act of 1990 to revise the operation of these Acts and to authorize the establishment of a fresh cut flowers

and fresh cut greens promotion and consumer information program for the benefit of the floricultural industry, and for other purposes.

1        *Be it enacted by the Senate and House of Representa-*  
 2        *tives of the United States of America in Congress assembled,*

3        **SECTION 1. SHORT TITLE.**

4        *This Act may be cited as the “Omnibus Agricultural*  
 5        *Research and Promotion Improvement Act”.*

6        **SEC. 2. TABLE OF CONTENTS.**

7        *The table of contents for this Act is as follows:*

*Sec. 1. Short title.*

*Sec. 2. Table of contents.*

*TITLE I—EGG RESEARCH AND CONSUMER INFORMATION*

*Sec. 101. Short title.*

*Sec. 102. Rate of assessment.*

*Sec. 103. Exempted egg producers.*

*TITLE II—WATERMELON RESEARCH AND PROMOTION*

*Sec. 201. Short title.*

*Sec. 202. Change to majority vote in referendum procedures.*

*Sec. 203. Expansion of watermelon plans to entire United States.*

*Sec. 204. Clarification of differences between producers and handlers.*

*Sec. 205. Clarification of collection of assessments by the Board.*

*Sec. 206. Changes to assessment rate not subject to formal rulemaking.*

*Sec. 207. Elimination of watermelon assessment refund.*

*Sec. 208. Equitable treatment of watermelon plans.*

*Sec. 209. Separate consideration of watermelon plan amendments.*

*TITLE III—FRESH CUT FLOWERS AND FRESH CUT GREENS  
 PROMOTION AND INFORMATION*

*Sec. 301. Short title.*

*Sec. 302. Findings and declaration of policy.*

*Sec. 303. Definitions.*

*Sec. 304. Issuance of orders.*

*Sec. 305. Fresh Cut Flowers and Fresh Cut Greens Promotion Council  
 (PromoFlor Council).*

*Sec. 306. Assessments.*

*Sec. 307. Miscellaneous requirements of order.*

*Sec. 308. Referenda.*

*Sec. 309. Petition and review.*

*Sec. 310. Enforcement.*

Sec. 311. Investigations and power to subpoena.  
 Sec. 312. Confidentiality.  
 Sec. 313. Authority for Secretary to suspend or terminate order.  
 Sec. 314. Construction.  
 Sec. 315. Regulations.  
 Sec. 316. Authorization of appropriations.  
 Sec. 317. Separability.

TITLE IV—LIME RESEARCH, PROMOTION, AND CONSUMER  
INFORMATION

Sec. 401. Short title.  
 Sec. 402. Findings and purpose.  
 Sec. 403. Definition of lime.  
 Sec. 404. Required terms in orders.  
 Sec. 405. Initial referendum.

**1        TITLE I—EGG RESEARCH AND**  
**2        CONSUMER INFORMATION**

**3        SEC. 101. SHORT TITLE.**

**4** *This title may be cited as the “Egg Research and*  
**5** *Consumer Information Improvement Act”.*

**6        SEC. 102. RATE OF ASSESSMENT.**

**7** *(a) ASSESSMENT TERMS AND CONDITIONS IN OR-*  
**8** *DERS.—Section 8(e) of the Egg Research and Consumer In-*  
**9** *formation Act (7 U.S.C. 2707(e)) is amended—*

**10** *(1) by designating the first and second sentences*  
**11** *as paragraph (1);*

**12** *(2) by designating the fifth and sixth sentences*  
**13** *as paragraph (3);*

**14** *(3) by striking the third and fourth sentences*  
**15** *and inserting the following new paragraph:*

**16** *“(2)(A) The rate of assessment shall be prescribed by*  
**17** *the order, except that the rate of assessment may not exceed*

1 30 cents per case of commercial eggs or the equivalent there-  
2 of.

3 “(B) The Secretary may amend the order to increase  
4 the rate of assessment (subject to the limitation in subpara-  
5 graph (A)) only if the increase is recommended by the Egg  
6 Board and approved by egg producers in a referendum con-  
7 ducted under section 9(b).

8 “(C) The Secretary may amend the order to decrease  
9 the rate of assessment only if the decrease is recommended  
10 by the Egg Board. A decrease in the rate of assessment shall  
11 take effect only after the Secretary provides public notice  
12 and an opportunity for comment in accordance with section  
13 553 of title 5, United States Code. Sections 556 and 557  
14 of such title shall not apply with respect to decreasing the  
15 rate of assessment.”; and

16 (4) by conforming the margins of paragraphs (1)  
17 and (3) (as so designated) to the margin of paragraph  
18 (2).

19 (b) *REFERENDUM REQUIREMENTS*.—Section 9 of the  
20 Egg Research and Consumer Information Act (7 U.S.C.  
21 2708) is amended—

22 (1) by designating the first two sentences as sub-  
23 section (a);

24 (2) by designating the last sentence as subsection  
25 (c);

1           (3) by inserting after subsection (a) (as so des-  
2           ignated) the following new subsection:

3           “(b)(1) Whenever the Egg Board determines, based on  
4           scientific studies, marketing analysis, or other similar com-  
5           petent evidence, that an increase in assessment rate is need-  
6           ed to ensure that assessments under the order are set at an  
7           appropriate level to effectuate the declared policy of this  
8           Act, the Egg Board may request that the Secretary conduct  
9           a referendum, as provided in paragraph (2).

10          “(2) When requested by the Egg Board under para-  
11          graph (1) or (3), the Secretary shall conduct a referendum  
12          among egg producers not exempt hereunder who, during a  
13          representative period determined by the Secretary, have  
14          been engaged in the production of commercial eggs, for the  
15          purpose of ascertaining whether such producers approve the  
16          increase in the assessment rate proposed by the Egg Board.  
17          The increase in the assessment rate shall take effect if ap-  
18          proved or favored by not less than two-thirds of the produc-  
19          ers voting in such referendum, or by a majority of the pro-  
20          ducers voting in such referendum if such majority produced  
21          not less than two-thirds of all the commercial eggs produced  
22          by those voting during a representative period defined by  
23          the Secretary.

24          “(3) With respect to the order in effect on the date of  
25          the enactment of this subsection, the Egg Board shall under-

1 take to determine under paragraph (1), as soon as prac-  
 2 ticable after such date of enactment, whether to request that  
 3 the Secretary conduct a referendum under paragraph (2).  
 4 If the Egg Board makes such a request on competent evi-  
 5 dence, as provided in paragraph (1), the Secretary shall  
 6 conduct such referendum as soon as practicable, but not  
 7 later than 120 days after receipt of the request from the  
 8 Egg Board.

9 “(4) Notwithstanding any other provision of this Act,  
 10 whenever an increase in the assessment rate and the author-  
 11 ity for additional increases is approved by producers in a  
 12 referendum under this subsection, the Secretary shall amend  
 13 the order as appropriate to reflect such vote of producers.  
 14 The amendment to the order shall become effective on the  
 15 date it is issued.”; and

16 (4) by conforming the margins of subsections (a)  
 17 and (c) (as so designated) to the margin of subsection  
 18 (b).

19 **SEC. 103. EXEMPTED EGG PRODUCERS.**

20 (a) INCREASE IN EXEMPTION AMOUNT.—Section  
 21 12(a)(1) of the Egg Research and Consumer Information  
 22 Act (7 U.S.C. 2711(a)(1)) is amended by striking “30,000  
 23 laying hens” and inserting “75,000 laying hens”.

24 (b) ISSUANCE OF AMENDMENT TO ORDER.—To imple-  
 25 ment the amendment made by subsection (a) to the Egg

1 *Research and Consumer Information Act, the Secretary of*  
 2 *Agriculture shall issue an amendment to the egg promotion*  
 3 *and research order issued under such Act. The amendment*  
 4 *to the order shall be issued after public notice and oppor-*  
 5 *tunity for comment in accordance with section 553 of title*  
 6 *5, United States Code. Sections 556 and 557 of such title*  
 7 *shall not apply with respect to the amendment to the order.*  
 8 *The Secretary shall issue the proposed amendment to the*  
 9 *order not later than 30 days after the date of the enactment*  
 10 *of this title.*

11 *(c) EFFECTIVE DATE.—The amendment to the egg pro-*  
 12 *motion and research order required by subsection (b) shall*  
 13 *become effective not later than 120 days after the date of*  
 14 *the enactment of this Act. The amendment shall not be sub-*  
 15 *ject to a referendum under the Egg Research and Consumer*  
 16 *Information Act.*

## 17 **TITLE II—WATERMELON**

## 18 **RESEARCH AND PROMOTION**

### 19 **SEC. 201. SHORT TITLE.**

20 *(a) SHORT TITLE.—This title may be cited as the*  
 21 *“Watermelon Research and Promotion Improvement Act”.*

### 22 **SEC. 202. CHANGE TO MAJORITY VOTE IN REFERENDUM**

### 23 **PROCEDURES.**

24 *Section 1653 of the Watermelon Research and Pro-*  
 25 *motion Act (7 U.S.C. 4912) is amended—*



- 1           (1) by inserting “(a)” after “SEC. 1653.”;
- 2           (2) by striking the third sentence; and
- 3           (3) inserting at the end the following new sub-
- 4           section:

5           “(b) A plan issued under this subtitle shall not take

6           effect unless the Secretary determines that the issuance of

7           the plan is approved or favored by a majority of the produc-

8           ers and handlers (and importers if subject to the plan) vot-

9           ing in the referendum.”.

10   **SEC. 203. EXPANSION OF WATERMELON PLANS TO ENTIRE**

11                           **UNITED STATES.**

12           (a) *DEFINITIONS.*—Section 1643 of the Watermelon

13           Research and Promotion Act (7 U.S.C. 4902(3)) is amend-

14           ed—

15                   (1) in paragraph (3), by striking “the forty-eight

16                   contiguous States of”; and

17                   (2) by adding at the end the following new para-

18                   graph:

19                           “(10) The term ‘United States’ means each of the

20                   several States and the District of Columbia.”.

21           (b) *ISSUANCE OF PLANS.*—The last sentence of section

22           1644 of such Act (7 U.S.C. 4903) is amended by striking

23           “the forty-eight contiguous States of”.

1 **SEC. 204. CLARIFICATION OF DIFFERENCES BETWEEN PRO-**  
 2 **DUCERS AND HANDLERS.**

3 *Section 1647(c) of the Watermelon Research and Pro-*  
 4 *motion Act (7 U.S.C. 4906(c)) is amended by adding at*  
 5 *the end the following:*

6 “(3) *If a producer purchases watermelons from other*  
 7 *producers, in a combined total volume that is equal to 25*  
 8 *percent or more of the producer’s own production, the pro-*  
 9 *ducer shall be eligible to serve on the Board only as a rep-*  
 10 *resentative of handlers and not as a representative of pro-*  
 11 *ducers. In addition, if the combined total volume of water-*  
 12 *melons handled by a producer from the producer’s own pro-*  
 13 *duction and purchases from other producers’ production is*  
 14 *more than 50 percent of the producer’s own production, the*  
 15 *producer shall be eligible to serve on the Board only as a*  
 16 *representative of handlers and not as a representative of*  
 17 *producers.”.*

18 **SEC. 205. CLARIFICATION OF COLLECTION OF ASSESS-**  
 19 **MENTS BY THE BOARD.**

20 *Section 1647 of the Watermelon Research and Pro-*  
 21 *motion Act (7 U.S.C. 4906) is amended—*

22 *(1) in subsection (f), by striking “collection of*  
 23 *the assessments by the Board.” and inserting “pay-*  
 24 *ment of the assessments to the Board.”; and*

25 *(2) in paragraphs (1) and (3) of subsection (g),*  
 26 *by striking “collected” and inserting “received”.*

1 **SEC. 206. CHANGES TO ASSESSMENT RATE NOT SUBJECT**  
2 **TO FORMAL RULEMAKING.**

3 *Section 1647(f) of the Watermelon Research and Pro-*  
4 *motion Act (7 U.S.C. 4906(f)), as amended by section*  
5 *205(1), is further amended by adding at the end the follow-*  
6 *ing new sentences: “In fixing or changing the rate of assess-*  
7 *ment pursuant to the plan, the Secretary shall comply with*  
8 *the notice and comment procedures established under sec-*  
9 *tion 553 of title 5, United States Code. Sections 556 and*  
10 *557 of such title shall not apply with respect to fixing or*  
11 *changing the rate of assessment.”.*

12 **SEC. 207. ELIMINATION OF WATERMELON ASSESSMENT RE-**  
13 **FUND.**

14 *Section 1647(h) of the Watermelon Research and Pro-*  
15 *motion Act (7 U.S.C. 4906(h)) is amended—*

16 *(1) by striking “The plan” in the first sentence*  
17 *and inserting “(1) Except as provided in paragraph*  
18 *(2), the plan”; and*

19 *(2) by adding at the end the following new para-*  
20 *graphs:*

21 *“(2) If approved in the referendum required by section*  
22 *1655(b) relating to the elimination of the assessment refund*  
23 *under paragraph (1), the Secretary shall amend the plan*  
24 *that is in effect on the day before the date of the enactment*  
25 *of the Watermelon Research and Promotion Improvement*  
26 *Act to eliminate such refund provision.*

1       “(3) Notwithstanding paragraph (2), if importers are  
2 subject to the plan, the plan shall provide that importers  
3 of less than 75,000 pounds of watermelons per year shall  
4 be entitled to apply for a refund of the equivalent of the  
5 rate of assessment paid by domestic producers. The Sec-  
6 retary may adjust the weight exemption contained in this  
7 paragraph to reflect significant changes in the average yield  
8 per acre of watermelons in the United States for the 5-year  
9 period immediately preceding the year in which the adjust-  
10 ment is made. An adjustment in the weight exemption  
11 under this paragraph may be made only upon the rec-  
12 ommendation of the Board and after the Secretary provides  
13 an opportunity for notice and comment on the proposed ad-  
14 justment.”.

15 **SEC. 208. EQUITABLE TREATMENT OF WATERMELON PLANS.**

16       (a) *DEFINITIONS.*—Section 1643 of the Watermelon  
17 Research and Promotion Act (7 U.S.C. 4902), as amended  
18 by section 203(a), is further amended—

19               (1) in paragraph (3), by striking the semicolon  
20 at the end and inserting the following: “or imported  
21 into the United States.”;

22               (2) by redesignating paragraphs (6) and (7) as  
23 paragraphs (8) and (9), respectively; and

24               (3) by inserting after paragraph (5) the follow-  
25 ing new paragraphs:

1           “(6) The term ‘importer’ means any person who  
2           imports watermelons into the United States.

3           “(7) The term ‘plan’ means an order issued by  
4           the Secretary under this subtitle.”.

5           (b) *ISSUANCE OF PLANS*.—Section 1644 of such Act  
6           (7 U.S.C. 4903), as amended by section 203(b), is further  
7           amended—

8           (1) in the first sentence, by striking “and han-  
9           dlers” and inserting “; handlers, and importers”;

10          (2) by striking the second sentence; and

11          (3) in the last sentence, by inserting “or im-  
12          ported into the United States” before the period.

13          (c) *NOTICE AND HEARINGS*.—Section 1645(a) of such  
14          Act (7 U.S.C. 4904(a)) is amended—

15          (1) in the first sentence, by striking “and han-  
16          dlers” and inserting “; handlers, and importers”; and

17          (2) in the last sentence, by striking “or handlers”  
18          and inserting “; handlers, or importers”.

19          (d) *MEMBERSHIP OF BOARD*.—Section 1647(c) of such  
20          Act (7 U.S.C. 4906(c)), as amended by section 204, is fur-  
21          ther amended—

22          (1) by inserting “(1)” after “(c)”;

23          (2) in the second sentence, by striking “producer  
24          and handler members” and inserting “other mem-  
25          bers”; and

1           (3) by adding at the end the following new para-  
2       graph:

3           “(2) If importers are subject to the plan, the Board  
4       shall also include one or more representatives of importers  
5       who shall be appointed by the Secretary from nominations  
6       submitted by importers in such manner as may be pre-  
7       scribed by the Secretary. Importer representation on the  
8       Board shall be proportionate to the percentage of assess-  
9       ments paid by importers to the Board, except that there  
10      shall always be at least one representative of importers on  
11      the Board. If importers are subject to the plan and fail to  
12      select nominees for appointment to the Board, the Secretary  
13      may appoint any importers as the representatives of im-  
14      porters. Every 5 years, the Secretary shall evaluate the av-  
15      erage annual percentage of assessments paid by importers  
16      during the most recent 3-year period and adjust, to the ex-  
17      tent possible, the number of importer representatives on the  
18      Board.”.

19           (e) ASSESSMENTS.—Section 1647(g) of such Act (7  
20       U.S.C. 4906(g)), as amended by section 205(2), is further  
21       amended—

22           (1) in paragraph (4)—

23                   (A) by striking “(4) assessments” and in-  
24                   serting “(4) Assessments”; and

1           (B) by inserting “in the case of producers  
2           and handlers” after “such assessments”; and

3           (2) by adding at the end the following new para-  
4           graph:

5           “(5) If importers are subject to the plan, an as-  
6           sessment shall also be made on watermelons imported  
7           into the United States by such importers. The rate of  
8           assessment for importers (if subject to the plan) shall  
9           be equal to the combined rate for producers and han-  
10          dlers.”.

11          (f) *REFUNDS*.—Section 1647(h) of such Act (7 U.S.C.  
12          4906(h)), as amended by section 207, is further amended—

13           (1) by inserting after “or handler” the first two  
14           places it appears the following: “(or importer if sub-  
15           ject to the plan)”; and

16           (2) by striking “or handler” the last place it ap-  
17           pears and inserting “, handler, or importer”.

18          (g) *ASSESSMENT PROCEDURES*.—Section 1649 of such  
19          Act (7 U.S.C. 4908) is amended—

20           (1) in subsection (a)—

21                   (A) by inserting “(1)” after “(a)”; and

22                   (B) by adding at the end the following new  
23           paragraph:

24           “(2) If importers are subject to the plan, each importer  
25          required to pay assessments under the plan shall be respon-

1 sible for payment of the assessments to the Board, as the  
2 Board may direct. The assessment on imported watermelons  
3 shall be paid by the importer to the Board at the time of  
4 the entry of the watermelons into the United States. Each  
5 such importer shall maintain a separate record specifying  
6 the total quantity of watermelons imported into the United  
7 States that are included under the terms of the plan, as  
8 well as those that are exempt under such plan, and contain-  
9 ing such other information as may be prescribed by the  
10 Board. No more than one assessment shall be made on any  
11 imported watermelons.”;

12 (2) in subsection (b), by inserting “and import-  
13 ers” after “Handlers”; and

14 (3) in subsection (c)(1), by inserting “or import-  
15 ers” after “handlers”.

16 (h) INVESTIGATIONS.—Section 1652(a) of such Act (7  
17 U.S.C. 4911(a)) is amended—

18 (1) in the first sentence, by striking “a handler  
19 or any other person” and inserting “a person”;

20 (2) in the fourth sentence, by inserting “(or an  
21 importer if subject to the plan)” after “a handler”;  
22 and

23 (3) in the last sentence, by striking “the handler  
24 or other person” and inserting “the person”.



1       (i) *REFERENDUM*.—Section 1653 of such Act (7 U.S.C.  
2 4912), as amended by section 202, is further amended—

3           (1) in the first sentence—

4               (A) by striking “and handlers” both places  
5 it appears and inserting “, handlers, and im-  
6 porters”; and

7               (B) by striking “or handling” and inserting  
8 “, handling, or importing”;

9           (2) by striking the second sentence; and

10          (3) in the sentence beginning “The ballots”—

11               (A) by striking “or handler” and inserting  
12 “, handler, or importer”; and

13               (B) by striking “or handled” and inserting  
14 “, handled, or imported”.

15       (j) *TERMINATION OF PLANS*.—Section 1654(b) of such  
16 Act (7 U.S.C. 4913(b)) is amended—

17           (1) in the first sentence—

18               (A) by striking “10 per centum or more”  
19 and inserting “at least 10 percent of the com-  
20 bined total”; and

21               (B) by striking “and handlers” both places  
22 it appears and inserting “, handlers, and im-  
23 porters”;

24           (2) in the second sentence—

1 (A) by striking “or handle” and inserting “,  
2 handle, or import”;

3 (B) by striking “50 per centum” and insert-  
4 ing “50 percent of the combined total”; and

5 (C) by striking “or handled by the han-  
6 dlers” and inserting “, handled by the handlers,  
7 and imported by the importers”; and

8 (3) by striking the last sentence.

9 (k) CONFORMING AND TECHNICAL AMENDMENTS.—  
10 Such Act is further amended—

11 (1) in section 1642(a)(5) (7 U.S.C. 4901(a)(5)),  
12 by striking “and handling” and inserting “handling,  
13 and importing”;

14 (2) in the first sentence of section 1642(b) (7  
15 U.S.C. 4901(b))—

16 (A) by inserting “, or imported into the  
17 United States,” after “harvested in the United  
18 States”; and

19 (B) by striking “produced in the United  
20 States”;

21 (3) in section 1643 (7 U.S.C. 4902), as amended  
22 by subsection (a) and section 203—

23 (A) by striking “subtitle—” and inserting  
24 “subtitle.”;

1           (B) in paragraphs (1), (2), (3), (4), and  
2           (5), by striking “the term” and inserting “The  
3           term”;

4           (C) in paragraphs (1), (2), (4), and (5), by  
5           striking the semicolon at the end and inserting  
6           a period;

7           (D) in paragraph (8), as redesignated by  
8           subsection (a)(2)—

9                 (i) by striking “the term” and insert-  
10                ing “The term”; and

11               (ii) by striking “; and” and inserting  
12               a period; and

13           (E) in paragraph (9), as redesignated by  
14           subsection (a)(2)—

15                 (i) by striking “the term” and insert-  
16                ing “The term”; and

17               (ii) by striking “1644” and inserting  
18               “1647”; and

19           (4) in section 1647(g) (7 U.S.C. 4906(g)), as  
20           amended by subsection (e) and section 205(2)—

21                 (A) by striking “that—” and inserting “the  
22               following:”;

23                 (B) in paragraph (1)—

24                     (i) by striking “(1) funds” and insert-  
25                     ing “(1) Funds”; and

1                   (ii) by striking the semicolon at the  
2                   end and inserting a period;

3                   (C) in paragraph (2)—

4                   (i) by striking “(2) no” and inserting  
5                   “(2) No”; and

6                   (ii) by striking the semicolon at the  
7                   end and inserting a period;

8                   (D) in paragraph (3)—

9                   (i) by striking “(3) no” and inserting  
10                  “(3) No”; and

11                  (ii) by striking “; and” and inserting  
12                  a period.

13 **SEC. 209. SEPARATE CONSIDERATION OF WATERMELON**  
14 **PLAN AMENDMENTS.**

15           Section 1655 of the Watermelon Research and Pro-  
16 motion Act (7 U.S.C. 4914) is amended—

17                  (1) by striking “The provisions” and inserting  
18                  “(a) Except as provided in section 1647(f), the provi-  
19                  sions”; and

20                  (2) by adding at the end the following new sub-  
21                  sections:

22                  “(b) The amendments described in subsection (c) that  
23                  are required to be made by the Secretary to a plan as a  
24                  result of the amendments made by the Watermelon Research  
25                  and Promotion Improvement Act shall be subject to separate

1 *line item voting and approval in a referendum conducted*  
 2 *pursuant to section 1653 before the Secretary alters the plan*  
 3 *as in effect on the day before the date of the enactment of*  
 4 *such Act.*

5 “(c) The amendments referred to in subsection (b) are  
 6 those amendments required under—

7 “(1) section 207 of the Watermelon Research and  
 8 Promotion Improvement Act relating to the elimi-  
 9 nation of the assessment refund; and

10 “(2) section 208 of such Act relating to subject-  
 11 ing importers to the terms and conditions of the plan.

12 “(d) When conducting the referendum relating to sub-  
 13 jecting importers to the terms and conditions of a plan, the  
 14 Secretary shall include as eligible voters in the referendum  
 15 producers, handlers, and importers who would be subject  
 16 to the plan if the amendments are approved.”

17 **TITLE III—FRESH CUT FLOWERS**  
 18 **AND FRESH CUT GREENS**  
 19 **PROMOTION AND INFORMA-**  
 20 **TION**

21 **SEC. 301. SHORT TITLE.**

22 *This title may be cited as the “Fresh Cut Flowers and*  
 23 *Fresh Cut Greens Promotion and Information Act”.*

24 **SEC. 302. FINDINGS AND DECLARATION OF POLICY.**

25 (a) *FINDINGS.—Congress finds the following:*

1           (1) *Fresh cut flowers and fresh cut greens are an*  
2           *integral part of life in the United States, are enjoyed*  
3           *by millions of persons every year for a multitude of*  
4           *special purposes (especially important personal*  
5           *events), and contribute a natural and beautiful ele-*  
6           *ment to the human environment.*

7           (2) *Cut flowers and cut greens are produced by*  
8           *many individual producers throughout the United*  
9           *States as well as in other countries, and are handled*  
10          *and marketed by thousands of small-sized and me-*  
11          *dium-sized businesses, and such production, handling,*  
12          *and marketing constitute a key segment of the United*  
13          *States horticultural industry and thus a significant*  
14          *part of the overall agricultural economy of the United*  
15          *States.*

16          (3) *Handlers play a vital role in the marketing*  
17          *of cut flowers and cut greens in that they purchase*  
18          *most of the cut flowers and cut greens marketed by*  
19          *producers, prepare the cut flowers and cut greens for*  
20          *retail consumption, serve as intermediary between*  
21          *source of product and retailer, otherwise facilitate the*  
22          *entry of cut flowers and cut greens into the current*  
23          *of domestic commerce, and add efficiencies to the*  
24          *market process that ensure the availability of a much*  
25          *greater variety of product to retailers and consumers.*

1           (4) *It is widely recognized that it is in the pub-*  
2           *lic interest and important to the agricultural econ-*  
3           *omy of the United States to provide an adequate,*  
4           *steady supply of cut flowers and cut greens at reason-*  
5           *able prices to consumers in the United States.*

6           (5) *Cut flowers and cut greens move in interstate*  
7           *and foreign commerce, and cut flowers and cut greens*  
8           *that do not move in such channels of commerce, but*  
9           *only in intrastate commerce, directly affect interstate*  
10          *commerce in cut flowers and cut greens.*

11          (6) *The maintenance and expansion of existing*  
12          *markets and the development of new or improved*  
13          *markets or uses for cut flowers and cut greens are*  
14          *needed to preserve and strengthen the economic viabil-*  
15          *ity of the domestic cut flowers and cut greens indus-*  
16          *try for the benefit of producers, handlers, retailers,*  
17          *and the entire floral industry.*

18          (7) *Generic programs of promotion and*  
19          *consumer information can be effective in maintaining*  
20          *and developing markets for cut flowers and cut*  
21          *greens, and have the advantage of equally enhancing*  
22          *the market position for all cut flowers and cut greens*  
23          *marketed.*

24          (8) *Because cut flowers and cut greens producers*  
25          *are primarily agriculture-oriented rather than pro-*

1     *motion-oriented, and because the floral marketing in-*  
2     *dustry within the United States is comprised mainly*  
3     *of small-sized and medium-sized businesses, the devel-*  
4     *opment and implementation of an adequate and co-*  
5     *ordinated national program of generic promotion and*  
6     *consumer information necessary for the maintenance*  
7     *of existing markets and the development of new mar-*  
8     *kets for cut flowers and cut greens have been pre-*  
9     *vented.*

10           *(9) There exist established State and commodity-*  
11           *specific producer-funded programs of promotion and*  
12           *research that are valuable efforts to expand markets*  
13           *for domestic producers of cut flowers and cut greens*  
14           *and that will be able to take advantage of the pro-*  
15           *motion and consumer information program author-*  
16           *ized by this title to enhance their market development*  
17           *efforts for domestic producers.*

18           *(10) An effective and coordinated method for en-*  
19           *suruing cooperative and collective action in providing*  
20           *for and financing a nationwide program of generic*  
21           *promotion and consumer information is needed to en-*  
22           *sure that the cut flowers and cut greens industry will*  
23           *be able to provide, obtain, and implement programs*  
24           *of promotion and consumer information necessary to*



1       *maintain, expand, and develop markets for these*  
2       *articles.*

3               *(11) The most efficient method of financing a*  
4       *nationwide program of generic promotion and*  
5       *consumer information regarding cut flowers and cut*  
6       *greens is to assess cut flowers and cut greens at the*  
7       *point they are sold by handlers into the retail market.*

8       *(b) POLICY AND PURPOSE.—It is declared to be the*  
9       *policy of Congress that it is in the public interest, and it*  
10       *is the purpose of this title, to authorize the establishment*  
11       *pursuant to this title of an orderly procedure for the devel-*  
12       *opment and financing (through an adequate assessment on*  
13       *cut flowers and cut greens sold by handlers to retailers and*  
14       *related entities in the United States) of an effective and*  
15       *coordinated program of generic promotion, consumer infor-*  
16       *mation, and related research designed to strengthen the po-*  
17       *sition of the cut flowers and cut greens industry in the mar-*  
18       *ketplace and to maintain, develop, and expand markets for*  
19       *cut flowers and cut greens.*

20       **SEC. 303. DEFINITIONS.**

21       *For purposes of this title:*

22               *(1) CONSUMER INFORMATION.—The term*  
23       *“consumer information” means any action or pro-*  
24       *gram to provide information to consumers and other*  
25       *persons regarding—*

1           (A) *appropriate uses of cut flowers or cut*  
2           *greens under varied circumstances; and*

3           (B) *the care and handling of cut flowers or*  
4           *cut greens.*

5           (2) *CUT FLOWERS AND CUT GREENS.—*

6           (A) *IN GENERAL.—The term “cut flowers”*  
7           *includes all flowers cut from growing plants and*  
8           *used as fresh-cut flowers, produced either under*  
9           *cover or in field operations. The term “cut*  
10           *greens” includes all cultivated or noncultivated*  
11           *decorative foliage cut from growing plants and*  
12           *used as fresh-cut decorative foliage, produced ei-*  
13           *ther under cover or in field operations. The term*  
14           *“cut greens” does not include Christmas trees,*  
15           *and neither term includes foliage plants, floral*  
16           *supplies, or flowering plants.*

17           (B) *SUBSTANTIAL PORTION.—In any case*  
18           *in which a handler packages cut flowers or cut*  
19           *greens with hard goods in an article, such as a*  
20           *gift basket or similar presentation, for sale to re-*  
21           *tailers, the PromoFlor Council may determine,*  
22           *under procedures set out in the order, that the*  
23           *cut flowers or cut greens in the article do not*  
24           *constitute a substantial portion of the value of*  
25           *the article. Based on such a determination, the*

1        *article containing the cut flowers or cut greens*  
2        *shall not be treated as an article of cut flowers*  
3        *or cut greens for purposes of—*

4                *(i) determining the annual sales of cut*  
5                *flowers and cut greens of a handler under*  
6                *paragraph (4)(C); or*

7                *(ii) imposing an assessment under sec-*  
8                *tion 306.*

9        *(3) GROSS SALES PRICE.—The term “gross sales*  
10        *price” means the total amount of the transaction in*  
11        *a sale of cut flowers or cut greens by a handler.*

12        *(4) HANDLER DEFINITIONS.—*

13                *(A) QUALIFIED HANDLER.—*

14                *(i) IN GENERAL.—The term “qualified*  
15                *handler” means a person (including a co-*  
16                *operative) operating in the cut flowers or*  
17                *cut greens industry that sells domestic or*  
18                *imported cut flowers or cut greens to retail-*  
19                *ers and exempt handlers and whose annual*  
20                *sales of cut flowers and cut greens to retail-*  
21                *ers and exempt handlers are \$750,000 or*  
22                *more.*

23                *(ii) INCLUSIONS.—The term “qualified*  
24                *handler” includes the following:*

25                        *(I) Bouquet manufacturers.*

1                   (II) Auction houses that clear  
2                   sales of cut flowers and cut greens to  
3                   retailers and exempt handlers through  
4                   a central clearinghouse.

5                   (III) Any distribution center that  
6                   is owned or controlled by a retailer if  
7                   the predominant retail business activ-  
8                   ity of the retailer is floral sales. For  
9                   purposes of determining sales of cut  
10                  flowers and cut greens to retailers from  
11                  any such distribution center, each non-  
12                  sale transfer to a retailer shall be treat-  
13                  ed as a sale in an amount calculated  
14                  as provided in subparagraph (C)(ii).

15                  (iii) *EXCLUSIONS.*—The term “quali-  
16                  fied handler” does not include a person who  
17                  merely physically transports or delivers cut  
18                  flowers or cut greens.

19                  (iv) *RULES OF CONSTRUCTION FOR DI-*  
20                  *RECT TO CONSUMER SALES.*—The term  
21                  “qualified handler” includes an importer  
22                  that sells directly to consumers cut flowers  
23                  or cut greens that it has imported into the  
24                  United States and whose sales of such cut  
25                  flowers or cut greens (as calculated under

1           subparagraph (C)), along with sales of cut  
2           flowers and cut greens to retailers or exempt  
3           handlers, annually are \$750,000 or more.  
4           The term “qualified handler” also includes  
5           a producer that sells directly to consumers  
6           cut flowers or cut greens that it has pro-  
7           duced and whose sales of such cut flowers or  
8           cut greens (as calculated under subpara-  
9           graph (C)), along with sales of cut flowers  
10          and cut greens to retailers or exempt han-  
11          dlers, annually are \$750,000 or more. Each  
12          direct sale to consumers by an importer or  
13          producer described in this clause shall be  
14          treated as a sale to a retailer or exempt  
15          handler in an amount calculated as pro-  
16          vided in clause (iii) or (iv) of subparagraph  
17          (C).

18          (B) *EXEMPT HANDLER.*—The term “exempt  
19          handler” means a person that would otherwise be  
20          considered to be a qualified handler, except that  
21          its annual sales of cut flowers and cut greens to  
22          retailers and other exempt handlers are less than  
23          \$750,000.

24          (C) *ANNUAL SALES DETERMINED.*—

1           (i) *IN GENERAL.*—For purposes of de-  
2           termining the amount of annual sales of cut  
3           flowers and cut greens under subparagraphs  
4           (A) and (B), the amount of a sale shall be  
5           determined on the basis of the gross sales  
6           price of product sold.

7           (ii) *SPECIAL RULE FOR DISTRIBUTION*  
8           *CENTERS.*—In the case of a non-sale trans-  
9           fer of cut flowers or cut greens from a dis-  
10          tribution center, as described in subpara-  
11          graph (A)(ii)(III), the amount of the sale  
12          shall be—

13               (I) the price paid by the distribu-  
14               tion center to acquire the cut flowers or  
15               cut greens; plus

16               (II) an amount determined by  
17               multiplying the acquisition price deter-  
18               mined under subclause (I) by a uni-  
19               form percentage established by the  
20               order to represent a wholesale handler's  
21               mark-up on a sale to a retailer.

22           (iii) *SPECIAL RULE FOR DIRECT SALES*  
23           *BY IMPORTERS.*—In the case of a direct sale  
24           by an importer to a consumer, as described

1           in subparagraph (A)(iv), the amount of the  
2           sale shall be—

3                   (I) the price paid by the importer  
4                   to acquire the cut flowers or cut greens;  
5                   plus

6                   (II) an amount determined by  
7                   multiplying the acquisition price deter-  
8                   mined under subclause (I) by a uni-  
9                   form percentage established by the  
10                  order to represent a wholesale handler's  
11                  mark-up on a sale to a retailer.

12               (iv) *SPECIAL RULE FOR DIRECT SALES*  
13               *BY PRODUCERS.*—In the case of a direct sale  
14               by a producer to a consumer, as described  
15               in subparagraph (A)(iv), the amount of the  
16               sale shall be an amount determined by ap-  
17               plying to the price paid by the consumer a  
18               uniform percentage established by the order  
19               to represent the cost of producing the article  
20               and a wholesale handler's mark-up on a  
21               sale to a retailer.

22               (D) *REFERENCE TO OTHER DEFINITIONS.*—  
23               For purposes of this paragraph, the term “pro-  
24               ducer” has the meaning given the term “produc-  
25               ers that are qualified handlers” in section

1           305(a)(2)(D)(ii), and the term “importer” has  
2           the meaning given the term “importers that are  
3           qualified handlers” in section 305(a)(2)(D)(iii).

4           (5) *PERSON*.—The term “person” means any in-  
5           dividual, group of individuals, firm, partnership, cor-  
6           poration, joint stock company, association, society,  
7           cooperative, or other legal entity.

8           (6) *PROMOFLORE COUNCIL*.—The term  
9           “PromoFlor Council” means the Fresh Cut Flowers  
10          and Fresh Cut Greens Promotion Council established  
11          under section 305(a).

12          (7) *PROMOTION*.—The term “promotion” means  
13          any action determined by the Secretary to advance  
14          the image, desirability, or marketability of cut flowers  
15          or cut greens, including paid advertising.

16          (8) *RESEARCH*.—The term “research” means  
17          market research and studies limited to the support of  
18          advertising, market development, and other promotion  
19          efforts and consumer information efforts relating to  
20          cut flowers or cut greens, including educational ac-  
21          tivities.

22          (9) *RETAILER*.—The term “retailer” means a  
23          person (such as a retail florist, supermarket, mass  
24          market retail outlet, or other end-use seller as de-  
25          scribed in an order issued under this title) that sells



1        *cut flowers or cut greens to consumers. The term shall*  
 2        *include any distribution center—*

3                *(A) owned or controlled by such person, or*  
 4                *owned or controlled cooperatively by a group of*  
 5                *such persons, if the predominant retail business*  
 6                *activity of such person is not floral sales; or*

7                *(B) independently owned but operated pri-*  
 8                *marily to provide food products to retail stores.*

9        *An independently owned distribution center covered*  
 10        *by subparagraph (B) that is also an importer or pro-*  
 11        *ducer of cut flowers or cut greens shall be subject to*  
 12        *the rules of construction set out in paragraph*  
 13        *(4)(A)(iv) and, for such purposes only, shall be*  
 14        *deemed to be the seller of cut flowers or cut greens di-*  
 15        *rectly to the consumer.*

16                *(10) SECRETARY.—The term “Secretary” means*  
 17                *the Secretary of Agriculture.*

18                *(11) UNITED STATES; STATE.—The terms*  
 19                *“United States” and “State” include the fifty States*  
 20                *of the United States, the District of Columbia, and all*  
 21                *the territories and possessions of the United States.*

22        **SEC. 304. ISSUANCE OF ORDERS.**

23                *(a) IN GENERAL.—To effectuate the declared policy of*  
 24        *section 302(b), the Secretary shall issue an order under this*  
 25        *title applicable to qualified handlers of cut flowers and cut*

1 *greens. Any such order shall be national in scope. Not more*  
2 *than one order shall be in effect under this title at any one*  
3 *time.*

4 *(b) PROCEDURES.—*

5 *(1) PROPOSAL FOR AN ORDER.—The Secretary*  
6 *may propose the issuance of an order under this title.*  
7 *In addition, an industry group that represents a sub-*  
8 *stantial number of the industry members who are to*  
9 *be assessed under the order, or any other person that*  
10 *will be affected by this title, may request the issuance*  
11 *of, and submit a proposal for, such an order.*

12 *(2) PUBLICATION OF PROPOSAL.—The Secretary*  
13 *shall publish the proposed order and give due notice*  
14 *and opportunity for public comment on the proposed*  
15 *order not later than 60 days after the earlier of—*

16 *(A) the date on which the Secretary receives*  
17 *the proposal for the order from an industry*  
18 *group or interested person, as provided in para-*  
19 *graph (1); or*

20 *(B) the date on which the Secretary deter-*  
21 *mines to propose the order.*

22 *(3) ISSUANCE OF ORDER.—After notice and op-*  
23 *portunity for public comment are provided, the Sec-*  
24 *retary shall issue the order, taking into consideration*  
25 *the comments received and including in the order pro-*

visions necessary to ensure that the order is in conformity with the requirements of this title. The order shall be issued and become effective not later than 180 days after publication of the proposed order.

(c) AMENDMENTS.—From time to time, the Secretary may amend an order issued under this title. The provisions of this title applicable to the issuance of an order shall be applicable to amendments to the order.

**SEC. 305. FRESH CUT FLOWERS AND FRESH CUT GREENS PROMOTION COUNCIL (PROMOFLOL COUNCIL).**

(a) ESTABLISHMENT OF PROMOFLOL COUNCIL.—

(1) ESTABLISHMENT.—The order issued under this title shall provide for the establishment of a Fresh Cut Flowers and Fresh Cut Greens Promotion Council to administer the order. The Secretary shall appoint the members of the PromoFlor Council in the manner provided in paragraphs (2) and (3).

(2) APPOINTMENT OF MEMBERS.—

(A) DISTRIBUTION OF APPOINTMENTS.—The order shall provide that the membership of the PromoFlor Council shall consist of 23 members as follows:

(i) Fourteen members selected from among qualified wholesale handlers of do-

1            *mestic or imported cut flowers and cut*  
2            *greens.*

3            *(ii) Three members selected from*  
4            *among producers that are qualified handlers*  
5            *of cut flowers and cut greens.*

6            *(iii) Three members selected from*  
7            *among importers that are qualified handlers*  
8            *of cut flowers and cut greens.*

9            *(iv) One member selected from among*  
10           *retailers of cut flowers and cut greens.*

11           *(v) Two members selected from among*  
12           *producers of cut flowers and cut greens that*  
13           *are not qualified handlers or exempt han-*  
14           *dlers.*

15           *(B) APPOINTMENT FROM NOMINEES.—The*  
16           *Secretary shall appoint the producer members of*  
17           *the PromoFlor Council required by subpara-*  
18           *graph (A)(v) from nominees submitted by pro-*  
19           *ducers of cut flowers and cut greens described in*  
20           *such paragraph. With respect to the other ap-*  
21           *pointments to the PromoFlor Council required*  
22           *by subparagraph (A), two nominees shall be sub-*  
23           *mitted for each appointment pursuant to the*  
24           *nomination process provided for in paragraph*  
25           *(3). If nominees are not submitted for an ap-*

1        *pointment, the Secretary may make the appoint-*  
2        *ment on a basis to be provided in the order or*  
3        *other regulations of the Secretary.*

4            (C) *GEOGRAPHICAL CONSIDERATIONS.—In*  
5        *making appointments of qualified wholesale han-*  
6        *dlers to the PromoFlor Council under subpara-*  
7        *graph (A)(i), the Secretary shall take into ac-*  
8        *count the geographical distribution of cut flowers*  
9        *and cut greens markets in the United States. In*  
10       *making appointments of producers of cut flowers*  
11       *and cut greens to the PromoFlor Council under*  
12       *subparagraph (A)(v), the Secretary shall ensure*  
13       *that one member is selected from among produc-*  
14       *ers located east of the Mississippi River and one*  
15       *member is selected from among producers located*  
16       *west of the Mississippi River.*

17           (D) *DEFINITIONS.—For purposes of this*  
18       *subsection:*

19           (i) *QUALIFIED WHOLESAL HAN-*  
20        *DLERS.—The term “qualified wholesale*  
21        *handler” means a person in business as a*  
22        *floral wholesale jobber or floral supplier and*  
23        *that is subject to assessments as a qualified*  
24        *handler under the order. For purposes of*  
25        *this clause, the term “floral wholesale job-*

1            *ber” means a person that conducts a com-*  
2            *mission or other wholesale business in buy-*  
3            *ing and selling cut flowers or cut greens,*  
4            *and the term “floral supplier” means a per-*  
5            *son engaged in acquiring cut flowers or cut*  
6            *greens to be manufactured into floral arti-*  
7            *cles or otherwise processed for resale.*

8            *(ii) PRODUCERS THAT ARE QUALIFIED*  
9            *HANDLERS.—The term “producers that are*  
10           *qualified handlers” means those persons*  
11           *that are subject to assessments as a quali-*  
12           *fied handler under the order and are en-*  
13           *gaged—*

14           *(I) in the domestic production, for*  
15           *sale in commerce, of cut flowers or cut*  
16           *greens if the persons own or share in*  
17           *the ownership and risk of loss of the*  
18           *cut flowers or cut greens; or*

19           *(II) as a first processor of*  
20           *noncultivated cut greens, in receiving*  
21           *the cut greens from the persons that*  
22           *gather them for handling.*

23           *(iii) IMPORTERS THAT ARE QUALIFIED*  
24           *HANDLERS.—The term “importers that are*  
25           *qualified handlers” means those persons—*

1                   (I) whose principal activity is the  
2                   importation of cut flowers or cut  
3                   greens into the United States (either  
4                   directly or as an agent, broker, or con-  
5                   signee of any person or nation that  
6                   produces or handles cut flowers or cut  
7                   greens outside the United States for  
8                   sale in the United States); and

9                   (II) that are subject to assessments  
10                  as a qualified handler under the order.

11               (3) NOMINATION PROCESS.—

12               (A) QUALIFIED HANDLERS.—Nominations  
13               for the appointment to the PromoFlor Council of  
14               qualified wholesale handlers, producers that are  
15               qualified handlers, or importers that are quali-  
16               fied handlers shall be made by qualified whole-  
17               sale handlers, producers that are qualified han-  
18               dlers, or importers that are qualified handlers,  
19               whichever applies, through an election process  
20               under regulations prescribed by the Secretary;

21               (B) RETAILERS.—Nominations for the re-  
22               tailer appointment under paragraph (2)(A)(iv)  
23               shall be made by the American Floral Marketing  
24               Council, or successor entity.

1           (4) *ALTERNATES.*—The order shall provide for  
2           the selection of alternate members of the PromoFlor  
3           Council by the Secretary under procedures specified  
4           in the order.

5           (5) *TERMS.*—The order shall provide that each  
6           member of the PromoFlor Council shall serve a term  
7           of three years. However, of the initial appointments,  
8           seven members shall be appointed for a term of two  
9           years, eight members shall be appointed for a term of  
10          three years, and eight members shall be appointed for  
11          a term of four years, as designated by the Secretary  
12          at the time of appointment. No member of the  
13          PromoFlor Council may serve more than two consecu-  
14          tive terms of three years, except that any member  
15          serving an initial term of four years may serve an  
16          additional term of three years.

17          (6) *COMPENSATION.*—Members of the PromoFlor  
18          Council shall serve without compensation, but shall be  
19          reimbursed for their expenses incurred in performing  
20          their duties as members of the PromoFlor Council.

21          (7) *EXECUTIVE COMMITTEE.*—

22                 (A) *ESTABLISHMENT.*—The order shall au-  
23                 thorize the PromoFlor Council to appoint from  
24                 among its members an executive committee of  
25                 not more than nine members. The membership of



1        *the executive committee initially shall be com-*  
2        *posed of four members appointed pursuant to*  
3        *clause (i) of subparagraph (2)(A), two members*  
4        *appointed pursuant to clause (ii) of such sub-*  
5        *paragraph, two members appointed pursuant to*  
6        *clause (iii) of such subparagraph, and one mem-*  
7        *ber appointed pursuant to clause (iv) of such*  
8        *subparagraph. Thereafter, appointments to the*  
9        *executive committee shall be made so as to ensure*  
10       *that the committee reflects, to the maximum ex-*  
11       *tent practicable, the membership composition of*  
12       *the PromoFlor Council as a whole. The initial*  
13       *appointments to the executive committee shall be*  
14       *for a term of two years. Thereafter, appoint-*  
15       *ments to the executive committee shall be for a*  
16       *term of one year.*

17            (B) *DELEGATION OF AUTHORITY.—The*  
18       *PromoFlor Council may delegate to the executive*  
19       *committee its authority under the order to hire*  
20       *and manage staff and conduct the routine busi-*  
21       *ness of the PromoFlor Council within the policies*  
22       *determined by the PromoFlor Council.*

23       (b) *RESPONSIBILITIES OF THE PROMOFLOL COUN-*  
24       *CIL.—*

1           (1) *IN GENERAL.*—The order shall define the re-  
2           responsibilities of the PromoFlor Council, which shall  
3           include the general responsibilities described in this  
4           subsection.

5           (2) *ADMINISTRATION.*—The PromoFlor Council  
6           shall administer the order in accordance with its  
7           terms and provisions and may prescribe such rules  
8           and regulations to effectuate the terms and provisions  
9           of the order as the PromoFlor Council considers ap-  
10          propriate.

11          (3) *STAFF.*—The PromoFlor Council may em-  
12          ploy such persons as the PromoFlor Council deter-  
13          mines are necessary and set the compensation and de-  
14          fine the duties of such persons.

15          (4) *MISCELLANEOUS.*—The PromoFlor Council  
16          may receive complaints regarding violations of the  
17          order and shall investigate and report to the Sec-  
18          retary regarding such complaints. The PromoFlor  
19          Council may recommend to the Secretary amend-  
20          ments to the order. The PromoFlor Council shall fur-  
21          nish the Secretary with such information as the Sec-  
22          retary may require.

23          (c) *BUDGETS.*—

24                (1) *SUBMISSION OF BUDGETS.*—The order shall  
25          require the PromoFlor Council to prepare and submit

1       to the Secretary on a fiscal year basis a budget of the  
2       anticipated expenses and disbursements of the Board  
3       to implement the order. The budget shall include pro-  
4       jected costs of cut flowers and cut greens promotion,  
5       consumer information, and related research plans and  
6       projects.

7               (2) *APPROVAL BY SECRETARY REQUIRED.*—The  
8       PromoFlor Council may not implement a budget sub-  
9       mitted under paragraph (1) before the budget is ap-  
10      proved by the Secretary.

11             (3) *INVESTMENT AUTHORITY.*—The order shall  
12      provide the PromoFlor Council with the authority to  
13      invest, pending disbursement under a plan or project,  
14      funds collected through assessments authorized under  
15      this title. Income from invested funds shall be used  
16      only for a purpose for which the invested funds may  
17      be used. The investment of such funds shall be made  
18      only in—

19               (A) obligations of the United States or any  
20      agency thereof;

21               (B) general obligations of any State or any  
22      political subdivision thereof;

23               (C) any interest-bearing account or certifi-  
24      cate of deposit of a bank that is a member of the  
25      Federal Reserve System; or

1                   (D) obligations fully guaranteed as to prin-  
2                   cipal and interest by the United States.

3                   (4) CONTROL OF ADMINISTRATIVE COSTS.—The  
4                   order shall provide that, as soon as practicable after  
5                   the date the order becomes effective and after consulta-  
6                   tion with the Secretary and other appropriate per-  
7                   sons, the PromoFlor Council shall implement a sys-  
8                   tem of cost controls based on normally accepted busi-  
9                   ness practices to ensure that the PromoFlor Council's  
10                  annual budgets only include amounts for administra-  
11                  tive expenses that cover the minimum administrative  
12                  activities and personnel needed to properly admin-  
13                  ister and enforce the order and conduct, supervise,  
14                  and evaluate plans and projects under the order.

15               (d) PLANS AND PROJECTS.—

16               (1) PROMOTION AND CONSUMER INFORMATION.—  
17               The order shall provide for the establishment, imple-  
18               mentation, administration, and evaluation by the  
19               PromoFlor Council of appropriate plans and projects  
20               for advertising, sales promotion, other promotion, and  
21               consumer information with respect to cut flowers and  
22               cut greens. A plan or project under this paragraph  
23               shall be directed toward increasing the general de-  
24               mand for cut flowers or cut greens.

1           (2) *RESEARCH.*—The order shall provide for the  
2           establishment, implementation, administration, and  
3           evaluation by the PromoFlor Council of plans and  
4           projects for market development research, research  
5           with respect to the sale, distribution, marketing, or  
6           use of cut flowers or cut greens, and other research  
7           with respect to cut flowers or cut greens marketing,  
8           promotion, or consumer information. The PromoFlor  
9           Council shall provide for the dissemination of infor-  
10          mation resulting from research plans and projects  
11          under this paragraph.

12          (3) *DISBURSEMENT OF FUNDS.*—The order shall  
13          also provide authority for the disbursement by the  
14          PromoFlor Council of necessary funds to carry out  
15          the plans and projects under this subsection.

16          (4) *SUBMISSION TO SECRETARY.*—The order  
17          shall provide that the PromoFlor Council shall submit  
18          to the Secretary for approval any proposed plan or  
19          project for cut flowers or cut greens promotion,  
20          consumer information, or related research under this  
21          subsection.

22          (5) *APPROVAL BY SECRETARY REQUIRED.*—The  
23          PromoFlor Council may not implement a plan or  
24          project for cut flowers or cut greens promotion,

1        *consumer information, or related research before the*  
2        *plan or project is approved by the Secretary.*

3            (6) *LIMITATIONS.—A plan or project under this*  
4        *subsection may not make a reference to a private*  
5        *brand or trade name, point of origin, or source of*  
6        *supply, except that these limitations shall not pre-*  
7        *clude the PromoFlor Council from offering its plans*  
8        *and projects for use by commercial parties, under*  
9        *terms and conditions prescribed by the PromoFlor*  
10       *Council and approved by the Secretary. A plan or*  
11       *project may not make use of unfair or deceptive acts*  
12       *or practices with respect to quality or value.*

13       (e) *CONTRACTS AND AGREEMENTS.—*

14            (1) *PROMOTION, CONSUMER INFORMATION, AND*  
15        *RELATED RESEARCH PLANS AND PROJECTS.—To en-*  
16        *sure the efficient use of funds, the order shall provide*  
17        *that, subject to the approval of the Secretary, the*  
18        *PromoFlor Council may—*

19            (A) *enter into contracts or agreements for*  
20        *the implementation of any plan or project under*  
21        *subsection (d) for promotion, consumer informa-*  
22        *tion, or related research with respect to cut flow-*  
23        *ers or cut greens; and*

1           (B) pay costs related to the plan or project  
2           with funds received by the PromoFlor Council  
3           under the order.

4           (2) REQUIREMENTS OF CONTRACTS AND AGREE-  
5           MENTS.—The order shall provide that any contract or  
6           agreement under paragraph (1) shall provide that—

7                   (A) the contracting or agreeing party shall  
8                   develop and submit to the PromoFlor Council a  
9                   plan or project together with a budget or budgets  
10                  that shall show estimated costs to be incurred  
11                  under the plan or project;

12                   (B) the plan or project shall become effective  
13                  only upon the approval of the Secretary; and

14                   (C) the contracting or agreeing party shall  
15                  keep accurate records of all of its transactions,  
16                  account for funds received and expended, make  
17                  periodic reports to the PromoFlor Council of ac-  
18                  tivities conducted, and make such other reports  
19                  as the PromoFlor Council or the Secretary may  
20                  require.

21           (3) OTHER CONTRACTS AND AGREEMENTS.—The  
22           order shall provide that the PromoFlor Council also  
23           may enter into contracts or agreements for adminis-  
24           trative services. Any such contract or agreement shall

1       include provisions comparable to those provided in  
2       paragraph (2).

3       (f) *BOOKS AND RECORDS OF THE PROMOFLOL COUN-*  
4 *CIL.*—

5           (1) *IN GENERAL.*—The order shall require the  
6       PromoFlor Council to maintain such books and  
7       records (which shall be available to the Secretary for  
8       inspection and audit) as the Secretary may prescribe.  
9       The PromoFlor Council shall also prepare and submit  
10      to the Secretary such reports as the Secretary may re-  
11      quire and account for the receipt and disbursement of  
12      all funds entrusted to the PromoFlor Council.

13          (2) *AUDITS.*—The PromoFlor Council shall cause  
14      its books and records to be audited by an independent  
15      auditor at the end of each fiscal year. A report of each  
16      such audit shall be submitted to the Secretary.

17          (3) *LISTS OF IMPORTERS.*—The order shall re-  
18      quire the staff of the PromoFlor Council to periodi-  
19      cally review lists of importers of cut flowers and cut  
20      greens to determine whether persons included in the  
21      lists are subject to the order. At the request of the  
22      PromoFlor Council, the United States Customs Serv-  
23      ice shall provide to the PromoFlor Council lists of im-  
24      porters of cut flowers and cut greens.



1       (g) *PROHIBITION ON LOBBYING.*—The order shall pro-  
 2       hibit the use of any funds received by the PromoFlor Coun-  
 3       cil in any manner for the purpose of influencing legislation  
 4       or government action or policy, except that funds may be  
 5       used by the PromoFlor Council for the development and rec-  
 6       ommendation to the Secretary of amendments to the order.

7       (h) *CONSULTATIONS WITH INDUSTRY EXPERTS.*—The  
 8       order shall provide that the PromoFlor Council may seek  
 9       advice from and consult with experts from the production,  
 10      import, wholesale, and retail segments of the cut flowers and  
 11      cut greens industry to assist in the development of pro-  
 12      motion, consumer information, and related research plans  
 13      and projects. For such purpose, the order also shall author-  
 14      ize the appointment of special committees composed of per-  
 15      sons other than PromoFlor Council members. A committee  
 16      appointed pursuant to the authority provided in this sub-  
 17      section may not provide advice or recommendations to an  
 18      agency or officer of the Federal Government, but shall con-  
 19      sult directly with the PromoFlor Council.

20      **SEC. 306. ASSESSMENTS.**

21      (a) *AUTHORITY TO IMPOSE ASSESSMENT.*—

22           (1) *IN GENERAL.*—An order issued under this  
 23      title shall provide that each qualified handler shall  
 24      pay to the PromoFlor Council, in the manner pre-  
 25      scribed by the order, an assessment on each sale of cut

1     *flowers or cut greens (other than a sale described in*  
2     *subsection (g)) to a retailer or an exempt handler.*  
3     *This assessment requirement shall also apply to each*  
4     *transaction described in paragraph (4).*

5             (2) *DETERMINATION OF QUALIFIED HANDLER OR*  
6     *EXEMPT HANDLER STATUS.—The order shall contain*  
7     *provisions regarding the making of determinations to*  
8     *determine status as a qualified handler or exempt*  
9     *handler that include the rules and requirements set*  
10    *out in section 303(4) and subsections (a) and (b) of*  
11    *section 307.*

12            (3) *PUBLISHED LISTS OF HANDLERS.—To facili-*  
13    *tate the payment of assessments under this section,*  
14    *the PromoFlor Council shall publish lists of qualified*  
15    *handlers required to pay assessments under the order*  
16    *and exempt handlers.*

17            (4) *CERTAIN COVERED TRANSACTIONS.—*

18                (A) *IN GENERAL.—The order shall provide*  
19    *that each non-sale transfer of cut flowers or cut*  
20    *greens to a retailer from a qualified handler that*  
21    *is a distribution center, as described in section*  
22    *303(4)(A)(ii)(III), and each direct sale of cut*  
23    *flowers or cut greens to a consumer by a quali-*  
24    *fied handler that is an importer or producer, as*  
25    *described in section 303(4)(A)(iv), shall be treat-*

1        *ed as a sale of cut flowers or cut greens to a re-*  
2        *tailer subject to assessments under this sub-*  
3        *section.*

4                *(B) DETERMINATION OF SALE AMOUNT FOR*  
5        *DISTRIBUTION CENTERS.—In the case of a non-*  
6        *sale transfer of cut flowers or cut greens from a*  
7        *distribution center, the amount of the sale shall*  
8        *be considered to be—*

9                *(i) the price paid by the distribution*  
10        *center to acquire the cut flowers or cut*  
11        *greens; plus*

12               *(ii) an amount determined by mul-*  
13        *tiplying acquisition price determined under*  
14        *clause (i) by a uniform percentage estab-*  
15        *lished by the order to represent a wholesale*  
16        *handler's mark-up on a sale to a retailer.*

17               *(C) DETERMINATION OF SALE AMOUNT FOR*  
18        *DIRECT SALES BY IMPORTERS.—In the case of a*  
19        *direct sale by an importer to a consumer, the*  
20        *amount of the sale shall be considered to be—*

21               *(i) the price paid by the importer to*  
22        *acquire the cut flowers or cut greens; plus*

23               *(ii) an amount determined by mul-*  
24        *tiplying the acquisition price determined*  
25        *under clause (i) by a uniform percentage es-*

1           *tablished by the order to represent a whole-*  
2           *sale handler's mark-up on a sale to a re-*  
3           *tailer.*

4           (D) *DETERMINATION OF SALE AMOUNT FOR*  
5           *DIRECT SALES BY PRODUCERS.—In the case of a*  
6           *direct sale by a producer to a consumer, the*  
7           *amount of the sale shall be considered to be an*  
8           *amount determined by applying to the price*  
9           *paid by the consumer a uniform percentage es-*  
10          *tablished by the order to represent the cost of*  
11          *producing the article and a wholesale handler's*  
12          *mark-up on a sale to a retailer.*

13          (E) *ADJUSTMENT OF UNIFORM PERCENT-*  
14          *AGE.—The PromoFlor Council may recommend*  
15          *to the Secretary changes to the uniform percent-*  
16          *age established by the order and used to deter-*  
17          *mine the amount of annual sales of handlers*  
18          *under section 303(4) and sale amounts under*  
19          *this paragraph. The Secretary may make a*  
20          *change in the uniform percentage based on such*  
21          *a recommendation only after providing an op-*  
22          *portunity for notice and comment regarding the*  
23          *proposed change.*

24          (b) *ASSESSMENT RATES.—The order shall comply*  
25          *with the following assessment requirements:*

1           (1) *INITIAL ASSESSMENT RATE.*—*The rate of as-*  
2           *essment on each sale or transfer of cut flowers or cut*  
3           *greens, for the first three years the order is in effect,*  
4           *shall be one-half of one percent of—*

5                     (A) *the gross sales price of product sold; or*

6                     (B) *in the case of transactions described in*  
7           *subsection (a)(4), the amount of the transaction*  
8           *calculated as provided in such subsection.*

9           (2) *CHANGES IN ASSESSMENT RATE.*—

10                    (A) *AUTHORIZED AMOUNT OF CHANGE.*—

11           *Subject to subparagraph (B), after the first three*  
12           *years the order is in effect, the uniform assess-*  
13           *ment rate may be increased or decreased annu-*  
14           *ally by not more than .25 percent of—*

15                    (i) *the gross sales price of product sold;*

16                    or

17                    (ii) *in the case of transactions de-*  
18           *scribed in subsection (a)(4), the amount of*  
19           *the transaction calculated as provided in*  
20           *such subsection.*

21                    (B) *LIMITATION.*—*The assessment rate may*  
22           *not exceed one percent of gross sales price or*  
23           *transaction amount.*

24                    (C) *METHOD OF CHANGING ASSESSMENT*  
25           *AMOUNT.*—*Any change in the rate of assessment*

1        *may be made only if adopted by the PromoFlor*  
2        *Council by a two-thirds majority vote and ap-*  
3        *proved by the Secretary as necessary to achieve*  
4        *the objectives of this title. The Secretary may*  
5        *make the change only after providing an oppor-*  
6        *tunity for notice and comment regarding the*  
7        *proposed change, and the change in the rate of*  
8        *assessment shall be announced by the PromoFlor*  
9        *Council at least 30 days prior to going into ef-*  
10       *fect. A change in the rate of assessment shall not*  
11       *be subject to a vote in a referendum under sec-*  
12       *tion 308.*

13       *(c) SUBMISSION OF ASSESSMENTS.—The order shall*  
14       *provide that each person required to pay assessments under*  
15       *this section shall remit, to the PromoFlor Council, the as-*  
16       *essment due from each sale by that person of cut flowers*  
17       *or cut greens that is subject to an assessment within such*  
18       *time period after the sale (not to exceed 60 days from the*  
19       *end of the month in which the sale took place) as specified*  
20       *in the order.*

21       *(d) REFUNDS FROM ESCROW ACCOUNT.—*

22                *(1) ESTABLISHMENT OF ESCROW ACCOUNT.—The*  
23       *order shall provide that the PromoFlor Council*  
24       *shall—*

1           (A) *establish an escrow account to be used*  
2           *for assessment refunds as needed; and*

3           (B) *place into the escrow account an*  
4           *amount equal to 10 percent of the total amount*  
5           *of assessments collected during the period begin-*  
6           *ning on the date the order goes into effect, as*  
7           *provided in section 304(b)(3), and ending on the*  
8           *date the initial referendum on the order provided*  
9           *for in section 308(a) is completed.*

10          (2) *RIGHT TO RECEIVE REFUND.—*

11           (A) *IN GENERAL.—The order shall provide*  
12           *that, subject to paragraph (3) and the conditions*  
13           *specified in subparagraph (B), any qualified*  
14           *handler shall have the right to demand and re-*  
15           *ceive from the PromoFlor Council out of the es-*  
16           *crow account a one-time refund of any assess-*  
17           *ments paid by or on behalf of the qualified han-*  
18           *dlers during the time period specified in para-*  
19           *graph (1)(B), if—*

20                   (i) *the qualified handler is required to*  
21                   *pay such assessments;*

22                   (ii) *the qualified handler does not sup-*  
23                   *port the program established under this*  
24                   *title;*

1           (iii) the qualified handler demands a  
2           refund prior to the conduct of the referen-  
3           dum on the order under section 308(a); and

4           (iv) the order is not approved by quali-  
5           fied handlers in the referendum.

6           (B) CONDITIONS.—The right of any quali-  
7           fied handler to receive refunds under subpara-  
8           graph (A) shall be subject to the following condi-  
9           tions:

10           (i) The demand shall be made in ac-  
11           cordance with regulations, on a form, and  
12           within a time period prescribed by the  
13           PromoFlor Council.

14           (ii) The refund shall be made only on  
15           submission of proof satisfactory to the  
16           PromoFlor Council that the qualified han-  
17           dler paid the assessment for which refund is  
18           demanded.

19           (iii) If the amount in the escrow ac-  
20           count required under paragraph (1) is not  
21           sufficient to refund the total amount of as-  
22           sessments demanded by all qualified han-  
23           dlers determined eligible for refunds and the  
24           order is not approved in the referendum on  
25           the order under section 308(a), the



1           *PromoFlor Council shall prorate the*  
2           *amount of all such refunds among all eligi-*  
3           *ble qualified handlers that demand a re-*  
4           *fund.*

5           (3) *PROGRAM APPROVED.*—*The order shall pro-*  
6           *vide that, if the order is approved in the referendum*  
7           *under section 308(a), there shall be no refunds made*  
8           *and all funds in the escrow account shall be returned*  
9           *to the PromoFlor Council for use by the PromoFlor*  
10          *Council in accordance with the other provisions of the*  
11          *order.*

12          (e) *USE OF ASSESSMENT FUNDS.*—*The order shall pro-*  
13          *vide that assessment funds (net of any refunds paid out*  
14          *under the terms of the order contained in subsection (d))*  
15          *shall be used for payment of costs incurred in implementing*  
16          *and administering the order, with provision for a reason-*  
17          *able reserve, and to cover those administrative costs in-*  
18          *curred by the Secretary in implementing and administer-*  
19          *ing this title, except for the salaries of Government employ-*  
20          *ees incurred in conducting referenda.*

21          (f) *POSTPONEMENT OF COLLECTIONS.*—

22                (1) *AUTHORITY.*—*Notwithstanding any other*  
23                *provision of this title, the PromoFlor Council may*  
24                *grant a postponement of the payment of assessments*  
25                *under this section for any qualified handler that es-*

1        *tablishes that it is financially unable to make the*  
2        *payment. The granting of such a postponement shall*  
3        *be considered under application and documentation*  
4        *requirements and review procedures established under*  
5        *rules recommended by the PromoFlor Council, ap-*  
6        *proved by the Secretary, and issued after providing*  
7        *public notice and an opportunity to comment on the*  
8        *proposed rules.*

9            (2) *CRITERIA AND RESPONSIBILITY FOR DETER-*  
10        *MINATIONS.—To establish that it is financially unable*  
11        *to pay assessments, an applicant for a postponement*  
12        *shall demonstrate that it is insolvent and will be un-*  
13        *able to continue to operate if it is required to pay as-*  
14        *sessments when they are otherwise due. As part of*  
15        *making such a demonstration, the applicant shall*  
16        *submit an opinion of an independent certified pubic*  
17        *accountant and any other documentation required*  
18        *under rules prescribed under paragraph (1). All*  
19        *books, records, and other documentation submitted by*  
20        *a qualified handler under this paragraph shall be*  
21        *subject to the confidentiality requirements of section*  
22        *307(d).*

23            (3) *PERIOD OF POSTPONEMENT.—The time pe-*  
24        *riod of any postponement and the terms and condi-*  
25        *tions of payment of assessments that are postponed*

1     *under this subsection shall be established by the*  
2     *PromoFlor Council, in accordance with rules pre-*  
3     *scribed under paragraph (1), so as to appropriately*  
4     *reflect the proven needs of the qualified handler. Post-*  
5     *ponements may be extended under the requirements*  
6     *and procedures established pursuant to paragraph (1)*  
7     *for the grant of initial postponements.*

8     (g) *EXCLUSION FROM ASSESSMENTS.—The order shall*  
9     *exclude from assessments under the order any sale of cut*  
10    *flowers or cut greens for export from the United States.*

11   ***SEC. 307. MISCELLANEOUS REQUIREMENTS OF ORDER.***

12       (a) *DETERMINATION OF ANNUAL SALES.—*

13           (1) *IN GENERAL.—For purposes of applying the*  
14       *\$750,000 annual sales limitation to specific persons*  
15       *in order to determine status as a qualified handler or*  
16       *an exempt handler under section 303(4), or to specific*  
17       *facilities in order to determine status as an eligible*  
18       *separate facility under section 308(b)(2), any order*  
19       *issued under this title shall provide that a determina-*  
20       *tion of a person's or facility's annual sales volume*  
21       *shall be based on the sales of cut flowers and cut*  
22       *greens by the person or facility during the most re-*  
23       *cently-completed calendar year.*

24           (2) *SPECIAL RULE FOR NEW BUSINESSES.—With*  
25       *respect to new businesses and other operations for*

1     *which complete data on sales during all or part of the*  
2     *most recently-completed calendar year are not avail-*  
3     *able to the PromoFlor Council, the determination*  
4     *under paragraph (1) may be made using an alter-*  
5     *native time period or other alternative procedures*  
6     *specified in the order.*

7             (3) *REPORTS.*—*For purposes of this section, the*  
8     *order may require each person that sells cut flowers*  
9     *or cut greens to retailers to submit reports to the*  
10    *PromoFlor Council on annual sales by the person. A*  
11    *report under this subsection shall be subject to the*  
12    *confidentiality requirements provided in subsection*  
13    *(d).*

14            (b) *RULE OF ATTRIBUTION.*—

15             (1) *IN GENERAL.*—*For purposes of determining*  
16    *the annual sales volume of a person or a separate fa-*  
17    *cility of a person, sales attributable to a person shall*  
18    *include—*

19                (A) *in those cases in which the person is an*  
20    *individual, sales attributable to such person's*  
21    *spouse, children, grandchildren, parents, and*  
22    *grandparents;*

23                (B) *in those cases in which the person is a*  
24    *partnership or member of a partnership, sales*

1        *attributable to the partnership and other part-*  
 2        *ners of the partnership;*

3            *(C) for both individuals and partnerships,*  
 4        *sales attributable to any corporation or other en-*  
 5        *tity in which the person owns more than 50 per-*  
 6        *cent of the stock or (if the entity is not a cor-*  
 7        *poration) that the person controls; and*

8            *(D) in those cases in which the person is a*  
 9        *corporation, sales attributable to any corporate*  
 10       *subsidiary or other corporation or entity in*  
 11       *which the corporation owns more than 50 per-*  
 12       *cent of the stock or (if the entity is not a cor-*  
 13       *poration) that the corporation controls.*

14        *(2) TREATMENT OF CERTAIN STOCK AND OWNER-*  
 15       *SHIP INTERESTS.—For purposes of this subsection,*  
 16       *stock or an ownership interest in an entity that is*  
 17       *owned by the spouse, children, grandchildren, parents,*  
 18       *grandparents, or partners of an individual, or by a*  
 19       *partnership in which a person is a partner, or by a*  
 20       *corporation more than 50 percent of the stock of*  
 21       *which is owned by a person, shall be treated as owned*  
 22       *by the individual or person.*

23        *(c) BOOKS, RECORDS, AND REPORTS.—So that infor-*  
 24       *mation is available to the Secretary and the PromoFlor*  
 25       *Council for the administration and enforcement of this title,*

1 *the order, or any regulation issued under this title, the order*  
2 *shall provide that each qualified handler shall—*

3 *(1) maintain, and make available for inspection,*  
4 *such books and records as may be required by the*  
5 *order; and*

6 *(2) file reports at the time, in the manner, and*  
7 *having the content prescribed by the order, to the end*  
8 *that information is made available to the Secretary*  
9 *and the PromoFlor Council as is appropriate for the*  
10 *administration or enforcement of this title, the order,*  
11 *or any regulation issued under this title.*

12 *(d) CONFIDENTIALITY REQUIRED.—*

13 *(1) IN GENERAL.—Information obtained by the*  
14 *PromoFlor Council from books, records, or reports re-*  
15 *quired to be maintained under this section shall be*  
16 *kept confidential by all officers and employees of the*  
17 *Department of Agriculture and by the staff and*  
18 *agents of the PromoFlor Council. Such information*  
19 *may be disclosed to the public only in a suit or ad-*  
20 *ministrative hearing involving the order that is*  
21 *brought at the request of the Secretary (or to which*  
22 *the Secretary or any officer of the United States is a*  
23 *party), and then, only to the extent the Secretary con-*  
24 *siders relevant.*

1           (2) *RULE OF CONSTRUCTION.*—Nothing in para-  
2       graph (1) prohibits—

3               (A) *the issuance of general statements, based*  
4               *on the reports, of the number of persons subject*  
5               *to the order or statistical data collected there-*  
6               *from, which statements do not identify the infor-*  
7               *mation furnished by any person; or*

8               (B) *the publication, by direction of the Sec-*  
9               *retary, of the name of any person violating the*  
10              *order, together with a statement of the particular*  
11              *provisions of the order violated by the person.*

12       (e) *OTHER TERMS OF ORDER.*—The order shall con-  
13       tain such other terms and provisions, not inconsistent with  
14       this title, as are necessary to effectuate this title, including  
15       provision for the assessment of interest and a charge for  
16       each late payment of assessments under this section.

17   **SEC. 308. REFERENDA.**

18       (a) *REQUIREMENT FOR INITIAL REFERENDUM.*—

19           (1) *CONDUCT.*—Not later than 36 months after  
20       the issuance of an order under section 304(b)(3), the  
21       Secretary shall conduct a referendum among qualified  
22       handlers required to pay assessments under the order  
23       to ascertain whether or not the order then in effect  
24       shall be continued.

1           (2) *APPROVAL OF ORDER NEEDED.*—The order  
2       shall be continued only if the Secretary determines  
3       that the order has been approved by a simple major-  
4       ity of all votes cast in the referendum. If the order is  
5       not approved, the Secretary shall terminate the order  
6       as provided in subsection (d).

7       (b) *VOTES PERMITTED.*—

8           (1) *IN GENERAL.*—Each qualified handler eligi-  
9       ble to vote in a referendum under this section may  
10      cast one vote for each separate facility of the person  
11      that is an eligible separate facility, as determined  
12      under paragraph (2).

13      (2) *ELIGIBLE SEPARATE FACILITY.*—

14           (A) *SEPARATE FACILITY.*—A handling or  
15      marketing facility of a qualified handler shall be  
16      considered a separate facility if it is physically  
17      located away from other facilities of the qualified  
18      handler or its business function is substantially  
19      different than the functions of other facilities  
20      owned or operated by the qualified handler.

21           (B) *ELIGIBILITY.*—A separate facility of a  
22      qualified handler shall be considered to be an eli-  
23      gible separate facility if the annual sales of cut  
24      flowers and cut greens to retailers and exempt  
25      handlers from the facility are \$750,000 or more.



1           (C) *ANNUAL SALES DETERMINED.*—Sub-  
2           paragraphs (A) and (C) of section 303(4) shall  
3           apply for purposes of determining the amount of  
4           annual sales of cut flowers and cut greens under  
5           subparagraph (B).

6           (c) *SUSPENSION OR TERMINATION REFERENDA.*—Ef-  
7           fective beginning three years after the date on which an  
8           order issued under this title is approved in a referendum  
9           conducted under subsection (a), the Secretary—

10           (1) *at the Secretary's discretion, may conduct at*  
11           *any time a referendum of qualified handlers required*  
12           *to pay assessments under the order to ascertain*  
13           *whether or not qualified handlers favor suspension or*  
14           *termination of the order; and*

15           (2) *whenever requested by the PromoFlor Council*  
16           *or by a representative group comprising 30 percent or*  
17           *more of all qualified handlers required to pay assess-*  
18           *ments under the order, shall conduct a referendum of*  
19           *all qualified handlers required to pay such assess-*  
20           *ments to ascertain whether or not qualified handlers*  
21           *favor suspension or termination of the order.*

22           (d) *SUSPENSION OR TERMINATION.*—If, as a result of  
23           the referendum conducted under subsection (a), the Sec-  
24           retary determines that the order has not been approved by  
25           a simple majority of all votes cast in the referendum, or

1 *as a result of a referendum conducted under subsection (c),*  
 2 *the Secretary determines that suspension or termination of*  
 3 *the order is favored by a simple majority of all votes cast*  
 4 *in the referendum, the Secretary shall—*

5           (1) *within six months after the referendum, sus-*  
 6 *pend or terminate, as appropriate, collection of as-*  
 7 *sessments under the order; and*

8           (2) *suspend or terminate, as appropriate, activi-*  
 9 *ties under the order in an orderly manner as soon as*  
 10 *practicable.*

11       (e) *MANNER OF CONDUCTING REFERENDA.—*  
 12 *Referenda under this section shall be conducted in such*  
 13 *manner as is determined appropriate by the Secretary.*

14 **SEC. 309. PETITION AND REVIEW.**

15       (a) *PETITION AND HEARING.—*

16           (1) *PETITION.—A person subject to an order is-*  
 17 *sued under this title may file with the Secretary a pe-*  
 18 *tition—*

19                   (A) *stating that the order, any provision of*  
 20 *the order, or any obligation imposed in connec-*  
 21 *tion with the order is not in accordance with*  
 22 *law; and*

23                   (B) *requesting a modification of the order*  
 24 *or an exemption from the order.*

1           (2) *HEARING.*—The petitioner shall be given the  
2           opportunity for a hearing on a petition filed under  
3           paragraph (1), in accordance with regulations issued  
4           by the Secretary. Any such hearing shall be conducted  
5           in accordance with section 311(b)(2) and be held  
6           within the United States judicial district in which  
7           the person’s residence or principal place of business is  
8           located.

9           (3) *RULING.*—After a hearing under paragraph  
10          (2), the Secretary shall make a ruling on the petition,  
11          which shall be final if in accordance with law.

12          (b) *REVIEW.*—

13               (1) *COMMENCEMENT OF ACTION.*—The district  
14          courts of the United States in any district in which  
15          a person that is a petitioner under subsection (a) re-  
16          sides or carries on business are hereby vested with ju-  
17          risdiction to review the Secretary’s ruling on the per-  
18          son’s petition, if a complaint for that purpose is filed  
19          within 20 days after the date of the entry of the rul-  
20          ing by the Secretary.

21               (2) *PROCESS.*—Service of process in proceedings  
22          under this subsection shall be conducted in accordance  
23          with the Federal Rules of Civil Procedure.

24               (3) *REMAND.*—If the court in a proceeding  
25          under this subsection determines that the Secretary’s

1        *ruling on the person's petition is not in accordance*  
 2        *with law, the court shall remand the matter to the*  
 3        *Secretary with directions either—*

4                *(A) to make such ruling as the court shall*  
 5                *determine to be in accordance with law; or*

6                *(B) to take such further action as, in the*  
 7                *opinion of the court, the law requires.*

8        *(c) ENFORCEMENT UNDER SECTION 310.—The pend-*  
 9        *ency of proceedings instituted under this section shall not*  
 10        *impede, hinder, or delay the Attorney General or the Sec-*  
 11        *retary from obtaining relief under section 310.*

12    **SEC. 310. ENFORCEMENT.**

13        *(a) JURISDICTION.—The several district courts of the*  
 14        *United States are vested with jurisdiction specifically to en-*  
 15        *force, and to prevent and restrain any person from violat-*  
 16        *ing, this title or an order or regulation made or issued by*  
 17        *the Secretary under this title.*

18        *(b) REFERRAL TO ATTORNEY GENERAL.—The Sec-*  
 19        *retary shall refer to the Attorney General for appropriate*  
 20        *action all cases of a violation of this title or an order or*  
 21        *regulation made or issued by the Secretary under this title,*  
 22        *except that the Secretary is not required to refer to the At-*  
 23        *torney General such a violation if the Secretary believes*  
 24        *that the administration and enforcement of this title would*  
 25        *be adequately served by administrative action under sub-*

1 *section (c) or suitable written notice or warning to the per-*  
2 *son who committed or is committing the violation.*

3 *(c) CIVIL PENALTIES AND ORDERS.—*

4 *(1) CIVIL PENALTIES.—A person that violates a*  
5 *provision of this title, or an order or regulation issued*  
6 *by the Secretary under this title, or who fails or re-*  
7 *fuses to pay, collect, or remit any assessment or fee*  
8 *duly required of the person under an order or regula-*  
9 *tion issued under this title, may be assessed by the*  
10 *Secretary—*

11 *(A) a civil penalty of not less than \$500 nor*  
12 *more than \$5,000 for each such violation; and*

13 *(B) in the case of a willful failure to remit*  
14 *an assessment as required by an order or regula-*  
15 *tion, an additional penalty equal to the amount*  
16 *of the assessment.*

17 *(2) TREATMENT AS SEPARATE OFFENSES.—Each*  
18 *violation described in paragraph (1) shall be treated*  
19 *as a separate offense.*

20 *(3) CEASE AND DESIST ORDERS.—In addition to*  
21 *or in lieu of a civil penalty under paragraph (1), the*  
22 *Secretary may issue an order requiring a person to*  
23 *cease and desist from continuing a violation of this*  
24 *title or an order or regulation issued under this title.*

1           (4) *NOTICE AND HEARING.*—No penalty shall be  
2           assessed or cease and desist order issued by the Sec-  
3           retary under this subsection unless the Secretary gives  
4           the person against whom the penalty is assessed or  
5           the order is issued notice and opportunity for a hear-  
6           ing before the Secretary with respect to the violation.  
7           The hearing shall be conducted in accordance with  
8           section 311(b)(2) and be held within the United  
9           States judicial district in which the person's residence  
10          or principal place of business is located.

11          (5) *FINALITY.*—The penalty assessed or cease  
12          and desist order issued under this subsection shall be  
13          final and conclusive unless the person against whom  
14          the penalty is assessed or the order is issued files an  
15          appeal with the appropriate district court of the  
16          United States in accordance with subsection (d).

17          (d) *REVIEW BY DISTRICT COURT.*—

18               (1) *COMMENCEMENT OF ACTION.*—Any person  
19               against whom a violation is found and a civil pen-  
20               alty assessed or cease and desist order issued under  
21               subsection (c) may obtain review of the penalty or  
22               order by—

23                       (A) filing, within the 30-day period begin-  
24                       ning on the date the penalty is assessed or order  
25                       issued, a notice of appeal in the district court of

1           *the United States for the district in which the*  
2           *person resides or carries on business, or in the*  
3           *United States district court for the District of*  
4           *Columbia; and*

5                     *(B) simultaneously sending a copy of the*  
6           *notice by certified mail to the Secretary.*

7           *(2) FILING OF RECORD.—Upon the filing of a*  
8           *notice of appeal under paragraph (1), the Secretary*  
9           *shall promptly file in the district court in which the*  
10          *notice of appeal is filed a certified copy of the record*  
11          *on which the Secretary found that the person had*  
12          *committed a violation.*

13           *(3) STANDARD OF REVIEW.—A finding of the*  
14          *Secretary shall be set aside under this subsection only*  
15          *if the finding is found to be unsupported by substan-*  
16          *tial evidence.*

17          *(e) FAILURE TO OBEY AN ORDER.—A person that fails*  
18          *to obey a cease and desist order issued under subsection (c)*  
19          *after the order has become final and unappealable, or after*  
20          *the appropriate United States district court has entered a*  
21          *final judgment in favor of the Secretary, shall be subject*  
22          *to a civil penalty assessed by the Secretary of not more than*  
23          *\$5,000 for each offense, after opportunity for a hearing and*  
24          *for judicial review under the procedures specified in sub-*  
25          *sections (c) and (d). Each day during which the failure con-*

1 *tinues shall be considered as a separate violation of the*  
 2 *order.*

3       (f) *FAILURE TO PAY A PENALTY.*—If a person fails  
 4 *to pay a civil penalty assessed under subsection (c) or (e)*  
 5 *after the penalty has become final and unappealable, or*  
 6 *after the appropriate United States district court has en-*  
 7 *tered final judgment in favor of the Secretary, the Secretary*  
 8 *shall refer the matter to the Attorney General for recovery*  
 9 *of the amount assessed in any United States district court*  
 10 *in which the person resides or carries on business. In such*  
 11 *action, the validity and appropriateness of the civil penalty*  
 12 *shall not be subject to review.*

13       (g) *ADDITIONAL REMEDIES.*—The remedies provided  
 14 *in this title shall be in addition to, and not exclusive of,*  
 15 *other remedies that may be available.*

16 **SEC. 311. INVESTIGATIONS AND POWER TO SUBPOENA.**

17       (a) *INVESTIGATIONS.*—The Secretary may make such  
 18 *investigations as the Secretary considers necessary for the*  
 19 *effective administration of this title, or to determine wheth-*  
 20 *er any person has engaged or is engaging in any act that*  
 21 *constitutes a violation of this title, or any order or regula-*  
 22 *tion issued under this title.*

23       (b) *SUBPOENAS, OATHS, AND AFFIRMATIONS.*—

24               (1) *INVESTIGATIONS.*—For the purpose of an in-  
 25 *vestigation under subsection (a), the Secretary may*



1     *administer oaths and affirmations, and issue subpoe-*  
2     *nas to require the production of any records that are*  
3     *relevant to the inquiry. The production of any such*  
4     *records may be required from any place in the United*  
5     *States.*

6           (2) *ADMINISTRATIVE HEARINGS.*—*For the pur-*  
7     *pose of an administrative hearing held under section*  
8     *309(a)(2) or 310(c)(4), the presiding officer may ad-*  
9     *minister oaths and affirmations, subpoena witnesses,*  
10    *compel their attendance, take evidence, and require*  
11    *the production of any records that are relevant to the*  
12    *inquiry. The attendance of witnesses and the produc-*  
13    *tion of any such records may be required from any*  
14    *place in the United States.*

15    (c) *AID OF COURTS.*—

16           (1) *IN GENERAL.*—*In the case of contumacy by,*  
17    *or refusal to obey a subpoena issued to, any person,*  
18    *the Secretary may invoke the aid of any court of the*  
19    *United States within the jurisdiction of which the in-*  
20    *vestigation or proceeding is carried on, or where the*  
21    *person resides or carries on business, in order to en-*  
22    *force a subpoena issued under subsection (b). The*  
23    *court may issue an order requiring the person to com-*  
24    *ply with such a subpoena. Any failure to obey the*

1        *order of the court may be punished by the court as*  
2        *a contempt thereof.*

3            (2) *PROCESS.*—*Process in any proceeding under*  
4        *this subsection may be served in the United States ju-*  
5        *dicial district in which the person being proceeded*  
6        *against resides or carries on business or wherever the*  
7        *person may be found.*

8        ***SEC. 312. CONFIDENTIALITY.***

9            (a) *PROHIBITION.*—*No information on how a person*  
10       *voted in a referendum conducted under this title shall be*  
11       *made public.*

12          (b) *PENALTY.*—*Any person knowingly violating sub-*  
13       *section (a) or the confidentiality terms of an order, as de-*  
14       *scribed in section 307(d), on conviction shall be subject to*  
15       *a fine of not less than \$1,000 nor more than \$10,000 or*  
16       *to imprisonment for not more than one year, or both, and,*  
17       *if an officer or employee of the Department of Agriculture*  
18       *or the PromoFlor Council, shall be removed from office.*

19          (c) *ADDITIONAL PROHIBITION.*—*No information ob-*  
20       *tained under this title may be made available to any agency*  
21       *or officer of the Federal Government for any purpose other*  
22       *than the implementation of this title and any investigatory*  
23       *or enforcement actions necessary for the implementation of*  
24       *this title.*

1       (d) *WITHHOLDING INFORMATION FROM CONGRESS*  
2 *PROHIBITED.*—Nothing in this title authorizes the with-  
3 holding of information from Congress.

4 **SEC. 313. AUTHORITY FOR SECRETARY TO SUSPEND OR**  
5 **TERMINATE ORDER.**

6       Whenever the Secretary finds that an order issued  
7 under this title, or any provision of the order, obstructs or  
8 does not tend to effectuate the declared policy of this title,  
9 the Secretary shall terminate or suspend the operation of  
10 the order or provision under such terms as the Secretary  
11 determines appropriate.

12 **SEC. 314. CONSTRUCTION.**

13       (a) *TERMINATION OR SUSPENSION NOT AN ORDER.*—  
14 The termination or suspension of an order, or any provi-  
15 sion thereof, shall not be considered an order under the  
16 meaning of this title.

17       (b) *PRODUCER RIGHTS.*—Nothing in this title may be  
18 construed to provide for control of production or otherwise  
19 limit the right of individual cut flowers and cut greens pro-  
20 ducers to produce cut flowers and cut greens. This title seeks  
21 to treat all persons producing cut flowers and cut greens  
22 fairly and to implement any order established hereunder  
23 equitably in every respect.

24       (c) *OTHER PROGRAMS.*—Nothing in this title may be  
25 construed to preempt or supersede any other program relat-

1 *ing to cut flowers or cut greens promotion and consumer*  
2 *information organized and operated under the laws of the*  
3 *United States or any State.*

4 **SEC. 315. REGULATIONS.**

5 *The Secretary may issue such regulations as are nec-*  
6 *essary to carry out this title and the powers vested in the*  
7 *Secretary by this title, including regulations relating to the*  
8 *assessment of late payment charges and interest.*

9 **SEC. 316. AUTHORIZATION OF APPROPRIATIONS.**

10 *(a) IN GENERAL.—There are authorized to be appro-*  
11 *priated for each fiscal year such sums as may be necessary*  
12 *to carry out this title.*

13 *(b) ADMINISTRATIVE EXPENSES.—Funds appro-*  
14 *priated under subsection (a) may not be used for payment*  
15 *of the expenses or expenditures of the PromoFlor Council*  
16 *in administering any provision of an order issued under*  
17 *this title.*

18 **SEC. 317. SEPARABILITY.**

19 *If any provision of this title or the application thereof*  
20 *to any person or circumstances is held invalid, the validity*  
21 *of the remainder of the title and of the application of such*  
22 *provision to other persons and circumstances shall not be*  
23 *affected thereby.*

1 ***TITLE IV—LIME RESEARCH, PRO-***  
2 ***MOTION, AND CONSUMER IN-***  
3 ***FORMATION***

4 ***SEC. 401. SHORT TITLE.***

5 *This title may be cited as the “Lime Research, Pro-*  
6 *motion, and Consumer Information Improvement Act”.*

7 ***SEC. 402. FINDINGS AND PURPOSE.***

8 *(a) FINDINGS.—Congress finds the following:*

9 *(1) The Lime Research, Promotion, and*  
10 *Consumer Information Act of 1990 (7 U.S.C. 6201 et*  
11 *seq.) was enacted on November 28, 1990, for the pur-*  
12 *pose of establishing an orderly procedure for the devel-*  
13 *opment and financing of an effective and coordinated*  
14 *program of research, promotion, and consumer infor-*  
15 *mation to strengthen the domestic and foreign mar-*  
16 *kets for limes.*

17 *(2) The lime research, promotion, and consumer*  
18 *information order required by such Act became effec-*  
19 *tive on January 27, 1992.*

20 *(3) Although the intent of such Act was to cover*  
21 *seedless limes, the definition of the term “lime” in sec-*  
22 *tion 1953(6) of such Act (7 U.S.C. 6202(6)) applies*  
23 *to seeded limes. Therefore, the Act and the order need*  
24 *to be revised before a research, promotion, and*

1        *consumer information program on seedless limes can*  
2        *go into effect.*

3            (4) *Since the enactment of such Act, the United*  
4        *States production of fresh market limes has plum-*  
5        *meted and the volume of imports has risen dramati-*  
6        *cally. The drop in United States production is pri-*  
7        *marily due to damage to lime orchards in the State*  
8        *of Florida by Hurricane Andrew in August 1992.*  
9        *United States production is not expected to reach pre-*  
10       *Hurricane Andrew levels for possibly two to three*  
11       *years because a majority of the limes produced in the*  
12       *United States are produced in Florida.*

13       (b) *PURPOSES.—The purpose of this Act is to amend*  
14       *the Lime Research, Promotion, and Consumer Information*  
15       *Act of 1990 (7 U.S.C. 6201 et seq.)—*

16            (1) *to cover seedless rather than seeded limes;*  
17            (2) *to increase the exemption level;*  
18            (3) *to delay the initial referendum date; and*  
19            (4) *to alter the composition of the Lime Board.*

20       **SEC. 403. DEFINITION OF LIME.**

21       *Section 1953(6) of the Lime Research, Promotion, and*  
22       *Consumer Information Act of 1990 (7 U.S.C. 6202(6)) is*  
23       *amended by striking “citrus aurantifolia” and inserting*  
24       *“citrus latifolia”.*

1 **SEC. 404. REQUIRED TERMS IN ORDERS.**

2 (a) *COMPOSITION OF LIME BOARD.*—Subsection (b) of  
3 section 1955 of the Lime Research, Promotion, and  
4 Consumer Information Act of 1990 (7 U.S.C. 6204) is  
5 amended—

6 (1) in paragraph (1)(A), by striking “7” and in-  
7 serting “3”;

8 (2) in paragraph (2)(B), by striking “7” and in-  
9 serting “3”; and

10 (3) in paragraph (2)(F), by adding at the end  
11 the following new sentence: “The Secretary shall ter-  
12minate the initial Board established under this sub-  
13section as soon as practicable after the date of the en-  
14actment of the Lime Research, Promotion, and  
15Consumer Information Improvement Act.”.

16 (b) *ALLOCATION OF MEMBERS.*—Subsection (b)(2) of  
17 such section is amended—

18 (1) in subparagraph (B) (as amended by sub-  
19 section (a)(2)), by adding at the end the following  
20 new sentence: “Of these producer members, 2 members  
21 shall be appointed from the district east of the Mis-  
22sissippi River and 1 member shall be appointed from  
23 the district west of the Mississippi River.”; and

24 (2) in subparagraph (C), by adding at the end  
25 the following new sentence: “Of these importer mem-  
26bers, 1 member shall be appointed from the district

1       *east of the Mississippi River and 2 members shall be*  
2       *appointed from the district west of the Mississippi*  
3       *River.”.*

4       (c) *TERMS OF MEMBERS.*—Subsection (b)(4) of such  
5       *section is amended—*

6               (1) *by striking “Members of” and all that follows*  
7               *through “appointed—” and inserting “The initial*  
8               *members of the Board appointed under the amended*  
9               *order shall serve a term of 30 months. Subsequent ap-*  
10              *pointments to the Board shall be for a term of 3*  
11              *years, except that—”;*

12              (2) *in subparagraph (A), by striking “3” and*  
13              *inserting “2”;*

14              (3) *in subparagraph (B), by striking “4” and*  
15              *inserting “2”; and*

16              (4) *in subparagraph (C), by striking “4” and in-*  
17              *serting “3”.*

18       (d) *DE MINIMIS EXCEPTION.*—Subsection (d)(5) of  
19       *such section is amended by striking “35,000” each place*  
20       *it appears and inserting “200,000”.*

21       ***SEC. 405. INITIAL REFERENDUM.***

22       *Section 1960(a) of the Lime Research, Promotion, and*  
23       *Consumer Information Act of 1990 (7 U.S.C. 6209(a)) is*  
24       *amended by striking “Not later than 2 years after the date*  
25       *on which the Secretary first issues an order under section*



1 1954(a),” and inserting “Not later than 30 months after  
2 the date on which the collection of assessments begins under  
3 the order pursuant to section 1955(d),”.

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